IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 473/2005

SHRI NAND KISHORE HARJANI Vs. SHRI VIJAY MANCHANDA

Date: 30.05.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. M.C. Jain for the complainant-petitioner.

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None appeared on behalf of the accused-respondent despite service.

Heard learned counsel for the complainant-petitioner on the application under Section 5 of the Limitation Act.

Having gone through the reasons stated in the application under Section 5 of the Limitation Act, I am fully satisfied with the same.

Accordingly, the application under Section 5 of the Limitation Act is allowed. Delay of 31 days in filing the present revision petition is condoned.

Heard the revision petition on merit.

The present criminal revision petition under Section 397 Cr.P.C. is preferred by the complainant-petitioner against the order dated 23.05.2003 passed by the Additional Civil Judge (Jr. Division) & Judicial

Magistrate No.17, Jaipur City, Jaipur in Complaint No. 481/2002, whereby the complaint filed by the complainant-petitioner has been dismissed in default.

Learned counsel for the petitioner placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Mohd. Azeem Vs. A. Venkatesh And Another, (2002) 7 SCC 726,** wherein it has been held by the Hon'ble Supreme Court that Offence under S. 138, Negotiable Instruments Act- One singular default in appearance on the part of the complainant- Dismissal of complaint is not proper- Cause shown by the complainant that he wrongly noted the date was not disbelieved and therefore it was a valid ground for restoration of the complaint- Further, even if the complainant failed to examine the witnesses on earlier dates, held, the same could not be a ground to dismiss his complaint for his absence on one single day.

Here in the instant case also, the complainant-petitioner on account of sickness was unable to attend the Court and has also submitted sickness certificate, therefore, only on the count of one singular default in appearance, the complaint filed by the complainant-petitioner should not be dismissed in view of the ratio decided by the Hon'ble Supreme Court in the aforementioned case of **Mohd. Azeem (supra).**

In view of the aforesaid observations, the impugned order dated 23.05.2003 passed by the Additional Civil Judge (Jr. Division) & Judicial Magistrate No.17, Jaipur City, Jaipur is hereby quashed and set-aside and the matter is remanded back to the trial Court for fresh adjudication after giving opportunity of being heard to the parties and shall pass fresh order as per law.

The revision petition stands disposed of accordingly.

(K.S. RATHORE),J.

/KKC/